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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re STEPHEN T., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN T.,

Defendant and Appellant.

F072433

(Super. Ct. No. 513340)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Valli K. Israels, Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Lewis A. Martinez and Gregory B. Wagner, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Kane, Acting P.J., Franson, J. and Peña, J.

The court committed appellant Stephen T. to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ) after it sustained allegations that he violated his probation. (Welf. & Inst. Code, § 777.) On appeal, Stephen contends the court abused its discretion when it committed him to the DJJ. We affirm.

## **FACTS**

### ***Prior Adjudications***

On May 31, 2013, after Stephen's mother refused to allow him into the house because he appeared to be under the influence of methamphetamine, Stephen broke into his brother's room in the garage and fell asleep. When his brother woke him up, Stephen threatened to shoot him in the face. He then grabbed a knife, waved it at his brother and threatened to stab him. After Stephen began fighting with his brother, his mother called the police and they arrested Stephen.

On June 3, 2013, the Stanislaus County District Attorney filed a petition (Welf. & Inst. Code, § 602.) that charged Stephen, who was then 14 years old, with brandishing a knife (Pen. Code, § 417, subd. (a)(1)),<sup>1</sup> a misdemeanor.

On June 11, 2013, Stephen admitted the brandishing offense.

During an interview with the probation officer, Stephen reported that he used black tar heroin and methamphetamine on a daily basis.<sup>2</sup> He also reported that he received failing grades in school, had experienced behavior problems there including being expelled, and that his attendance was poor. Stephen acknowledged that he did not have a good relationship with his mother or older siblings and that he had run away from home several times. Although Stephen denied participating in a gang, his mother

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

<sup>2</sup> In May 2013, prior to being arrested for brandishing a knife, Stephen was hospitalized for a methamphetamine-induced psychosis.

reported that he was a self-proclaimed neo-Nazi and that he associated with other neo-Nazi gang members.

On June 25, 2013, the court adjudged Stephen a ward of the court and placed him on probation. It also committed him to juvenile hall for 60 days with 34 of those days to be served on the home commitment program.

On June 30, 2013, Stephen ran away from home.

On August 1, 2013, at approximately 7:40 a.m., police found Stephen and Jose Hernandez asleep in a car that had been reported stolen.

On August 2, 2013, the district attorney filed a subsequent petition (Welf. & Inst. Code, § 602) charging Stephen with receiving a stolen vehicle (§ 496d, subd. (a)), a misdemeanor.

On August 19, 2013, Stephen admitted the receiving a stolen vehicle charge.

On September 3, 2013, the court continued Stephen on probation and ordered him to serve 120 days in juvenile hall.

On October 14, 2013, while Stephen, Clay H. and J.O. were being led back to their rooms at the hall, Clay began striking J.O. with his fists and Stephen joined in. When an officer gave the “cover” command, J.O. obeyed but Stephen and Clay continued striking him until Clay was sprayed with pepper spray.

On October 17, 2013, the district attorney filed a second subsequent petition (Welf. & Inst. Code, § 602) that charged Stephen with assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4)), a felony.

On November 21, 2013, Stephen admitted the assault charge.

On November 25, 2013, during an interview with probation, Stephen stated that he associated with several gangs, the Peckerwoods, the Crips, and the Northerners, but not with the Southerners. According to Stephen, he was involved in assaulting J.O. because J.O. “talked sh\*t about the East Side.” Stephen admitted he had a drug problem and

having used marijuana, methamphetamine, heroin and acid, although he claimed to have stopped using methamphetamine and heroin.

On December 10, 2013, the court continued Stephen on probation and ordered him to serve 90 days in juvenile hall.

On January 6, 2014, Stephen's mother reported to the probation department that Stephen had left the residence and did not return. Stephen's whereabouts were unknown until he surrendered to the Modesto Police Department on March 28, 2014. A drug test administered that day was presumptively positive for marijuana. Additionally, a probation officer checked the school where Stephen reported he enrolled and was informed that Stephen had not been enrolled there after October 2012.

On March 28, 2014, the probation department filed a violation of probation petition (Welf. & Inst. Code, § 777) that alleged Stephen violated his probation by failing to attend juvenile drug court sessions, failing to obey his mother, failing to contact his probation officer, failing to attend school, and testing positive for marijuana.

On April 1, 2014, Stephen admitted that he violated his probation as alleged in the petition. The court continued Stephen on probation and ordered him to serve 75 days in juvenile hall.

On July 23, 2014, Stephen was ordered to serve 45 days in juvenile hall for a drug court violation. He was released on August 18, 2014.

On August 26, 2014, Stephen tested positive for cocaine and benzodiazepines.

On September 2, 2014, after being arrested, Stephen admitted using cocaine and ecstasy the previous weekend.

On September 3, 2015, the probation department filed a second violation of probation petition (Welf. & Inst. Code, § 777) that alleged Stephen violated his probation by testing positive for cocaine and benzodiazepines.

On September 4, 2014, Stephen admitted violating his probation as alleged.

During a September 11, 2014, interview with the probation department, Stephen reported that he had started experimenting with cocaine and ecstasy and that his drug of choice was marijuana. He also reported using alcohol occasionally, that he last used alcohol two weeks earlier, heroin and methamphetamine two years earlier, and that two months earlier he used synthetic marijuana. Stephen denied associating with a gang. He also told the probation officer that he did not want out-of-home placement services and that he would run away if placed in a group home.

On October 13, 2014, Stephen was diagnosed with adjustment disorder and polysubstance abuse.

On October 16, 2014, the court ordered Stephen's custody removed from his mother and that he be detained in juvenile hall pending suitable placement.

On November 17, 2014, Stephen was placed in Clearview Treatment Program (CTP) in Apple Valley, California.

On January 27, 2015, Stephen was diagnosed with bipolar disorder and polysubstance abuse.

A probation report filed on February 6, 2015, indicated that Stephen was making progress at CTP, that he participated in individual and group counseling, and that he had not had any behavioral issues or tested positive for drugs. However, his grades were "abysmal" and he had not completed his case plan objectives. The report recommended continued placement at CTP until Stephen completed these objectives.

On April 2, 2015, Stephen absconded from his placement at CTP.

On May 2, 2015, at approximately 3:51 a.m., Stephen was found sleeping in a stolen vehicle that was missing a cover on the steering column. A drug test administered after he was arrested was presumptively positive for marijuana. During an interview with a probation officer, Stephen admitted that while he was on the run he used ecstasy, cocaine, and marijuana and smoked cigarettes.

On May 4, 2015, the probation department filed a third violation of probation petition (Welf. & Inst. Code, § 777) that alleged Stephen violated his probation by failing to obey all laws, attend school, adhere to his curfew, obey the rules of his placement and by using and possessing alcohol, drugs or other controlled substances.

On May 5, 2015, Stephen admitted he violated his probation as alleged in the petition.

On May 19, 2015, the court continued Stephen in the custody of the probation officer pending suitable placement.

On May 26, 2015, Stephen was diagnosed with attention deficit hyperactivity disorder (ADHD).

On June 19, 2015, the court ordered Stephen placed at Glen Mills in Pennsylvania.

On July 6, 2015, while confined in juvenile hall awaiting placement at Glen Mills, Stephen carved the following statements on his food tray: "BIG NORTE WE DON'T GIVE A F\*\*K EAST SIDE MODESTO NORTE," "187 on [Probation Correctional Officer] Steve Yang!![,] "187 on Steve [,]" and "I'm get [*sic*] his ass 40. Cal Don't Play Steve." When given a disciplinary review hearing form to sign, Stephen wrote on the form, "F\*\*k Yang[,] He's a bitch!!! E\$M14."

On July 15, 2015, Deputy Probation Officer Amy Jacobs noted on a placement review form that while awaiting placement at Glen Mills, Stephen accumulated 15 incident reports, including one issued for the above incident involving Probation Correctional Officer Steve Yang. Jacobs also noted that after Glen Mills was informed of Stephen's behavior at juvenile hall, his acceptance to that program was revoked. Also on that date, when Probation Correctional Officer Angela Perez informed Stephen that he had "failed day two of Re-entry," Stephen began yelling out of his window, "I'll crack your f\*\*king face! I'll shoot you on the outs with a shotgun! F\*\*g bitch ass staff, I'm going to get you on the outs!"

On July 24, 2015, the probation department filed a fourth violation of probation petition (Welf. & Inst. Code, § 777) which alleged that Stephen failed to obey the directives of his probation officer.

On July 27, 2015, Stephen admitted that he violated the terms of his probation as alleged. When the court noted that the probation department was recommending a commitment of 240 days to juvenile hall, defense counsel did not oppose the recommendation. However, the prosecutor disagreed with the recommendation and the court set the matter for a disposition hearing.

On August 13, 2015, at a contested disposition hearing, Officer Yang testified that on July 6, 2015, Stephen was on lockup in his room because two days earlier he was involved with other minors in a unit disruption at the hall. When he and another officer retrieved a Styrofoam food tray from Stephen, they found the threatening messages described above carved into it. Officer Yang further testified that the “187” carved on the tray referred to the Penal Code section for murder, and that “Big Norte,” “Eastside Modesto Norte” and “ESM 14” (Eastside Modesto 14) referred to a Modesto street gang that is associated with the Norte gang. Officer Yang felt threatened by the writing on the tray.

After Officer Yang testified, the prosecutor argued that the court should commit Stephen to the DJJ and defense counsel argued for a commitment to juvenile hall for 240 days as recommended by the probation department. The court noted that neither party was asking for placement and it terminated Stephen’s placement, and vacated its placement orders. The court then continued the hearing so that it could consider whether to commit Stephen to the DJJ or recommit him to juvenile hall for 240 days.

On August 28, 2015, the court committed Stephen to the DJJ stating:

“... Stephen has been given the highest forms of counseling here with probation and drug court and programs in the hall. When put into placement he absconded. When granted admission to the highest level of placement, Glen[ ] Mills, he acted out and eventually was rejected from the

program after being accepted. [¶] Thus, the [c]ourt feels that placement is no longer appropriate and the reformatory efforts of probation in juvenile hall have not succeeded.”

The court then set Stephen’s maximum term of confinement at four years six months and committed him to the DJJ while noting that DJJ offered “intensive counseling services, particularly with respect to anger management, violence, and gangs.”

### **DISCUSSION**

In making a placement determination, the juvenile court “shall consider, in addition to other relevant and material evidence, (1) the age of the minor, (2) the circumstances and gravity of the offense committed by the minor, and (3) the minor’s previous delinquent history.” (Welf. & Inst. Code, § 725.5.) Appellate courts review a commitment decision by the juvenile court for an abuse of discretion. All reasonable inferences are indulged to support the juvenile court’s decision. (*In re Angela M.* (2003) 111 Cal.App.4th 1392, 1396 (*Angela M.*)). Although a DJJ commitment is usually a placement of last resort, the juvenile court is not required to first exhaust all less restrictive alternatives. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473; *In re Tyrone O.* (1989) 209 Cal.App.3d 145, 151.) A commitment to the DJJ is not an abuse of the juvenile court’s discretion “where the evidence demonstrates *a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.*” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250, italics added.)

Stephen was first adjudged a ward of the court when he was 14 years old for brandishing a knife at his brother while high on drugs. At the time, his mother reported that he was a self-proclaimed neo-Nazi and that he hung out with other neo-Nazi gang members. He was also using heroin and methamphetamine on a regular basis. Within a few months of committing the brandishing offense, Stephen was found sleeping in a stolen vehicle and was subsequently adjudicated for receiving a stolen vehicle. While in custody for that offense, he participated in a gang-motivated assault of another incarcerated juvenile and was subsequently adjudicated of assault by means of force



likely to cause great bodily injury. Thereafter, he admitted allegations contained in four separate petitions that he violated his probation. Although Stephen was not charged with any more crimes following his adjudication for assault, his threats to shoot and/or kill Officers Yang and Perez arguably violated section 422. Further, Stephen's carvings on the food tray demonstrated that he continued to be involved with gangs.

The court could reasonably find from these circumstances and Stephen's poor school performance that he would benefit from the educational, vocational and intensive counseling programs available at the DJJ that would address his substance abuse, gang affiliation, and violent behavior as well as his educational needs. (Cf. *In re Tyrone O.*, *supra*, 209 Cal.App.3d at p. 153 [trial court properly found that the DJJ, with its specialized institutions and rehabilitative programs tailored to the delinquent's sophistication and need for security, probably would benefit the minor].) Further, in view of Stephen's continued defiance and threatening behavior, the court could also reasonably find he would benefit from the discipline and structure inherent in a commitment to the DJJ, that it would hold him accountable for his behavior, and that a commitment there was consistent with the purposes of the juvenile court law, which now recognizes punishment as a rehabilitative tool. (Welf. & Inst. Code, § 202, subd. (b).)

Moreover, Stephen had a history of running away from home, he threatened to run away from placement, subsequently absconded when placed at CTP, and he successfully averted being placed at Glen Mills by acting out. Stephen also continued to violate his probation even while in a custodial setting at juvenile hall, and, as noted, he threatened to kill two staff members when he was released. Thus, the record also supports a finding that less restrictive alternatives, including juvenile hall, would be inappropriate or ineffective because Stephen required a long-term, secure placement and he would continue to pose a danger to other wards and staff wherever he was placed.

Stephen raises several challenges to his commitment to the DJJ. He contends his conduct was related to his mental health issues and that the court abused its discretion in

committing him to the DJJ because, although he served commitments to juvenile hall, “he never had a real opportunity to show he could conform to treatment or given the necessary treatment to meet his unique situation.” We disagree.

Defense counsel did not dispute the court’s statement that while he was in custody at the hall, Stephen had been given “the highest forms of counseling” and that he participated in other programs there in addition to drug court. He also was examined by several doctors and prescribed appropriate medication to deal with his mental health issues. However, despite several commitments to juvenile hall and the treatment and medication he received there, Stephen continued to violate his probation and his unabated delinquent behavior at the hall culminated in Stephen threatening two officers with death or great bodily harm.

Stephen also contends that there was no evidence he would receive any services at all at DJJ. However, “[t]here is no requirement that the court find exactly how a minor will benefit from being committed to DJJ. The court is only required to find if it is probable a minor will benefit from being committed[.]” (*In re Jonathan T.* (2008) 166 Cal.App.4th 474, 486.)

Stephen further contends the court failed to explore three potential mental health treatment facilities that serve delinquent youth from Stanislaus County who have a history of violence, gang affiliation and mental health disorders.<sup>3</sup> However, even assuming the court did not consider these potential placements in committing Stephen to the DJJ, this would not undermine the court’s decision to commit him there.

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<sup>3</sup> He cites the 2008/2009 edition of the Juvenile Placement Manual to contend the court had available placements at Fresno Youth Care, Sierra Vista Children’s Center and Valley Group Home. Stephen contends that these placements specifically served delinquent youth from Stanislaus County that have a history of violence, gang affiliation, and mental health disorders and that they provide drug and alcohol treatment and group/family and individual counseling.

“[A]n appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.” (*In re James V.* (1979) 90 Cal.App.3d 300, 304, italics added.) Further, “all ‘claims involving the trial court’s failure to properly make or articulate its discretionary sentencing choices’ raised for the first time on appeal are not subject to review.” (*People v. Smith* (2001) 24 Cal.4th 849, 852, quoting *People v. Scott* (1994) 9 Cal.4th 331, 353.) This doctrine generally applies to juvenile court proceedings. (*In re Khonsavanh S.* (1998) 67 Cal.App.4th 532, 536-537.)

Defense counsel did not offer any evidence in the juvenile court that these programs were suitable placements for Stephen or object to the juvenile court’s alleged failure to consider them. Therefore, since the programs were not presented to the court as viable placement alternatives, we need not consider them in determining the correctness of his commitment to DJJ and, in any event, Stephen forfeited this issue by defense counsel’s failure to object to the court’s alleged failure to consider them.

But even if this issue were properly before us, we would reject it because Stephen does not explain why any of these placements would be appropriate for him in light of his need for a highly secure and structured setting and his inability to conform his behavior to the court’s orders outside of such a setting. Additionally, defense counsel implicitly conceded that other less restrictive placements, with the exception of juvenile hall, were inappropriate when he argued for a 240-day commitment to juvenile hall as recommended by the probation department.<sup>4</sup> Thus, we conclude that the court did not abuse its discretion when it committed Stephen to the DJJ.

### **DISPOSITION**

The judgment is affirmed.

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<sup>4</sup> Stephen also challenges his commitment to DJJ by arguing that although his behavior in juvenile hall was unacceptable, it never rose to the level of criminal conduct. However, as noted earlier, this contention ignores his threats to Officers Yang and Perez.